

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JASON RISINGER,

Plaintiff,

Case No. 2:23-cv-00435 TSZ

vs.

LIBERTY MUTUAL INSURANCE
COMPANY; and OHIO SECURITY
INSURANCE COMPANY,

Defendants.

PROTECTIVE ORDER

The Court enters the following Protective Order, which is based on the District's Model Protective Order and portions of the parties' proposed stipulated protective order, docket no. 39.

1. PURPOSES AND LIMITATIONS

Discovery in this action (the "Litigation") is likely to involve production of confidential, proprietary, or private information (hereinafter "Confidential Information") for which special protection may be warranted. Accordingly, the parties have stipulated to and asked the Court to enter a protective order. The parties acknowledge that their agreement does not confer blanket protection on all disclosures or responses to discovery; the protection to be afforded from public disclosure and use extends only to the limited information or items that are entitled

1 to confidential treatment under the applicable legal principles, and this Protective Order does
2 not presumptively entitle parties to file confidential information under seal.

3 **2. “CONFIDENTIAL” MATERIAL**

4 Defendants claim that certain materials are “confidential.” This material may include,
5 but not be limited to, the following: (a) social security numbers and any similar personally
6 identifying information; (b) tax documents and information related thereto; (c) financial
7 information; (d) employee personnel files; (e) training documents; (f) claim handling
8 guidelines; (g) vendor service agreements; and any other information to be requested in
9 discovery that the producing party has maintained as confidential and proprietary in the normal
10 course of its business.

12 **3. SCOPE**

13 The protections conferred by this agreement cover not only claimed confidential
14 material (as defined above), but also (1) any information copied or extracted from claimed
15 confidential material; (2) all copies, excerpts, summaries, or compilations of claimed
16 confidential material; and (3) any testimony, conversations, or presentations by parties or their
17 counsel that might reveal claimed confidential material.

19 However, the protections conferred by this agreement do not cover information that is
20 in the public domain or becomes part of the public domain through trial or otherwise.

21 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

23 **4.1 Basic Principles.** A receiving party may use material designated as confidential that
24 is disclosed or produced by another party or by a non-party in connection with this case only
25 for prosecuting, defending, or attempting to settle this litigation. Such confidential material
26 may be disclosed only to the categories of persons and under the conditions described in this

1 Protective Order. Confidential material must be stored and maintained by a receiving party at
2 a location and in a secure manner that ensures that access is limited to the persons authorized
3 under this Protective Order.

4 **4.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise
5 ordered by the Court or permitted in writing by the designating party, a receiving party may
6 disclose any material designated as confidential only to:

7 (a) the receiving party’s counsel of record in this action, as well as employees of counsel
8 to whom it is reasonably necessary to disclose the information for this litigation;

9 (b) the officers, directors, and employees (including in house counsel) of the receiving
10 party to whom disclosure is reasonably necessary for this litigation;

11 (c) experts and consultants to whom disclosure is reasonably necessary for this
12 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
13 (Exhibit A);

14 (d) the court, court personnel, and court reporters and their staff;

15 (e) copy or imaging services retained by counsel to assist in the duplication of
16 confidential material, provided that counsel for the party retaining the copy or imaging service
17 instructs the service not to disclose any material designated as confidential to third parties and
18 to immediately return all originals and copies of any confidential material;

19 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
20 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
21 A), unless otherwise agreed by the designating party or ordered by the Court. Pages of
22 transcribed deposition testimony or exhibits to depositions that reveal material designated as
23

1 confidential must be separately bound by the court reporter and may not be disclosed to anyone
2 except as permitted under this agreement;

3 (g) the author or recipient of a document containing the information or a custodian or
4 other person who otherwise possessed or knew the information.

5 **4.3 Filing Material Designated as Confidential.** Before filing material designated as
6 confidential or discussing or referencing such material in court filings, the filing party shall
7 confer with the designating party to determine whether the designating party will remove the
8 confidential designation, whether the document can be redacted, or whether a motion to seal or
9 stipulation and proposed order is warranted. *See* Local Civil Rule 5(g)(3)(A). During the meet
10 and confer process, the designating party must identify the basis for sealing the specific
11 confidential information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
12 followed and the standards that will be applied when a party seeks permission from the Court
13 to file material under seal. A party who seeks to maintain the confidentiality of its information
14 must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing
15 the motion to seal. Failure to satisfy this requirement will result in the motion to seal being
16 denied, in accordance with the strong presumption of public access to the Court's files.

17 **5. DESIGNATING PROTECTED MATERIAL**

18 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each
19 party or non-party that designates information or items for protection under this agreement must
20 take care to limit any such designation to specific material that qualifies under the appropriate
21 standards. The designating party must designate for protection only those parts of material,
22 documents, items, or oral or written communications that qualify, so that other portions of the
23
24
25
26

1 material, documents, items, or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
5 unnecessarily encumber or delay the case development process or to impose unnecessary
6 expenses and burdens on other parties) expose the designating party to sanctions.
7

8 If it comes to a designating party's attention that information or items that it designated
9 for protection do not qualify for protection, the designating party must promptly notify all other
10 parties that it is withdrawing the mistaken designation.

11 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
12 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
13 ordered, disclosure or discovery material that qualifies for protection under this agreement must
14 be clearly so designated before or when the material is disclosed or produced.
15

16 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
17 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
19 contains confidential material. If only a portion or portions of the material on a page qualifies
20 for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
21 making appropriate markings in the margins).

22 (b) Testimony given in deposition or in other pretrial proceedings: the parties must
23 identify on the record, during the deposition, hearing, or other pretrial proceeding, all protected
24 testimony, without prejudice to their right to so designate other testimony after reviewing the
25 transcript. Any party or non-party may, within fifteen days after receiving the transcript of a
26

1 deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto,
2 as confidential.

3 (c) Other tangible items: the producing party must affix in a prominent place on the
4 exterior of the container or containers in which the information or item is stored the word
5 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
6 the producing party, to the extent practicable, shall identify the protected portion(s).

7 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to
8 designate qualified information or items does not, standing alone, waive the designating party's
9 right to secure protection under this agreement for such material. Upon timely correction of a
10 designation, the receiving party must make reasonable efforts to ensure that the material is
11 treated in accordance with the provisions of this agreement.

12 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 **6.1 Timing of Challenges.** Any party or non-party may challenge a designation of
14 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
15 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
16 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
17 challenge a confidentiality designation by electing not to mount a challenge promptly after the
18 original designation is disclosed.

19 **6.2 Meet and Confer.** The parties must make every attempt to resolve any dispute
20 regarding confidential designations without court involvement. Any motion regarding
21 confidential designations or for a protective order must include a certification, in the motion or
22 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
23 conference with other affected parties in an effort to resolve the dispute without court action.

1 The certification must list the date, manner, and participants to the conference. A good faith
2 effort to confer requires a face-to-face meeting or a telephone conference.

3 **6.3 Judicial Intervention.** If the parties cannot resolve a challenge without court
4 intervention, the designating party may file and serve a motion to retain confidentiality. The
5 burden of persuasion in any such motion shall be on the designating party. Frivolous
6 challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
7 expenses and burdens on other parties) may expose the challenging party to sanctions. All
8 parties shall continue to maintain the material in question as confidential until the Court rules
9 on the challenge.

10 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
11 **OTHER LITIGATION**

12 If a party is served with a subpoena or a court order issued in other litigation that
13 compels disclosure of any information or items designated in this action as
14 “CONFIDENTIAL,” that party must:

15 (a) promptly notify the designating party in writing and include a copy of the subpoena
16 or court order;

17 (b) promptly notify in writing the party who caused the subpoena or order to issue in
18 the other litigation that some or all of the material covered by the subpoena or order is subject
19 to this agreement. Such notification shall include a copy of this agreement; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
21 designating party whose confidential material may be affected.

1 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
3 confidential material to any person or in any circumstance not authorized under this agreement,
4 the receiving party must immediately (a) notify in writing the designating party of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
6 protected material, (c) inform the person or persons to whom unauthorized disclosures were
7 made of all the terms of this agreement, and (d) request that such person or persons execute the
8 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
10 **PROTECTED MATERIAL**

11 When a producing party gives notice to receiving parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
14 provision is not intended to modify whatever procedure may be established in an e-discovery
15 order or agreement that provides for production without prior privilege review. Pursuant to
16 Federal Rule of Evidence 502(d), the production of any documents, electronically stored
17 information (ESI), or information, whether inadvertent or otherwise, in this proceeding shall
18 not, for the purposes of this proceeding or any other federal or state proceeding, constitute a
19 waiver by the producing party of any privilege applicable to those documents, including the
20 attorney-client privilege, attorney work-product protection, or any other privilege or protection
21 recognized by law. This Order shall be interpreted to provide the maximum protection allowed
22 by Rule 502(d). The provisions of Federal Rule of Evidence 502(b) do not apply. Nothing
23 contained herein is intended to or shall serve to limit a party's right to conduct a review of
24
25
26

1 documents, ESI, or information (including metadata) for relevance, responsiveness and/or
2 segregation of privileged and/or protected information before production. Information
3 produced in discovery that is protected as privileged or work product shall be immediately
4 returned to the producing party.

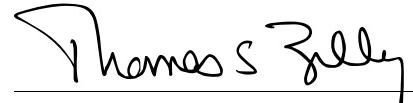
5 **10. NON-TERMINATION AND RETURN OF DOCUMENTS**

6 Within 60 days after the termination of this action, including all appeals, each receiving
7 party must return all material that retains its confidential designation to the producing party,
8 including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
9 appropriate methods of destruction.

10 The confidentiality obligations imposed by this agreement shall remain in effect until a
11 designating party agrees otherwise in writing or a court orders otherwise.

12
13 IT IS SO ORDERED.

14 Dated this 13th day of February, 2024.

15
16 
17

18 Thomas S. Zilly
19 United States District Judge
20
21
22
23
24
25
26

Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JASON RISINGER,

Plaintiff,

Case No. 2:23-cv-00435 TSZ

vs.

**ACKNOWLEDGMENT AND
AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

**LIBERTY MUTUAL INSURANCE
COMPANY and OHIO SECURITY
INSURANCE COMPANY,**

Defendants.

The undersigned has read the Protective Order that has been entered by the Court in this action. The undersigned agrees to comply with and to be bound by all the terms of the Protective Order and understands and acknowledges that failure to so comply could result in sanctions and punishment in the nature of contempt. The undersigned solemnly promises not to disclose in any manner any information or item that is subject to the Protective Order to any person or entity except in strict compliance with the provisions of the Protective Order. The undersigned further agrees to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of the Protective Order, even if such enforcement proceedings occur after termination of this action.

DATED:

City and State where sworn and signed: _____.

Printed Name: